



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R08-OAR-2024-0468; FRL-12884-01-R8]**

### **Air Plan Approval; Colorado; Inspection and Maintenance Program Revision**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Colorado through the Colorado Department of Public Health and Environment (CDPHE) on May 16, 2022. The revision includes changes to the Colorado Air Quality Control Commission’s Regulation Number 11, “Motor Vehicle Emissions Inspection Program.” The submitted changes constitute a revision to Colorado’s vehicle inspection and maintenance (I/M) SIP. Colorado’s I/M SIP revision includes several minor clerical and typographical revisions. The I/M SIP revision also streamlines the visual inspection procedures used on subject vehicles in obtaining I/M program emissions certification compliance and vehicle registration renewal. CDPHE also submitted revisions to its I/M program regulations which were marked as “state only” revisions and not meant for EPA consideration. The EPA is not acting upon these state-only changes in this action.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2024-0468, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the <https://www.regulations.gov> index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in <https://www.regulations.gov>. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

**FOR FURTHER INFORMATION CONTACT:** Gregory Lohrke, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6396, email address: [lohrke.gregory@epa.gov](mailto:lohrke.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

The Clean Air Act (CAA) requires states with areas designated as Moderate, Serious, Severe, or Extreme nonattainment areas for the ozone national ambient air quality standard (NAAQS) to establish SIP provisions necessary to provide for a vehicle inspection and maintenance (I/M) program that will identify and repair high-emitting vehicles operating in the nonattainment area. *See* CAA sections 182(b)(4), (c)(3), (d) and (e). The requirements for CAA-mandated I/M programs are codified in the federal I/M Rule at 40 CFR part 51, subpart S.

Within the I/M Rule, 40 CFR 51.350 details the applicability for nonattainment areas to establish I/M programs. Certain urbanized Moderate ozone nonattainment areas are required to establish a “Basic” I/M program. Certain urbanized Serious, Severe, and Extreme ozone nonattainment areas are required to implement an “Enhanced” I/M program. The performance standards<sup>1</sup> for Basic and Enhanced I/M programs are outlined in 40 CFR 51.352 and 51.351 respectively. Enhanced I/M programs have additional requirements and require program elements intended to strengthen ozone precursor reductions over the Basic program. Additional I/M program features in Enhanced program areas include on-road testing requirements and more rigorous program evaluation and reporting requirements.

The Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado nonattainment area (Denver or the “DMNFR area”) failed to attain the 2008 ozone NAAQS by the applicable attainment date for Moderate nonattainment areas and was reclassified as a Serious nonattainment area, effective January 27, 2020.<sup>2 3</sup> Since the Denver nonattainment area was reclassified as a Serious nonattainment area for the 2008 ozone NAAQS, the State of Colorado was required to establish an Enhanced I/M program equivalent to, or more stringent than, the relevant program performance standard under 40 CFR 51.351.

Colorado has maintained an Enhanced I/M program for the DMNFR area since January 1, 1995. Colorado’s Enhanced program was originally required under CAA section 187(a)(6) due to the Denver area’s nonattainment designation and classification as Serious nonattainment for the carbon monoxide NAAQS.<sup>4</sup> The State maintained the Enhanced I/M program between 1995 and the DMNFR area’s reclassification as a Serious ozone nonattainment area in 2020. Since Colorado had been operating an I/M program meeting the Enhanced performance standard

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<sup>1</sup> An I/M performance standard is a collection of program design elements which defines a benchmark program to which a state’s proposed I/M program is compared in terms of its potential to reduce emissions of the ozone precursors, VOC, and NOx.

<sup>2</sup> 84 FR 70897 (Dec. 26, 2019).

<sup>3</sup> The Denver area has since been reclassified as Severe for the 2008 ozone NAAQS. See 87 FR 60926 (Oct. 7, 2022).

<sup>4</sup> 59 FR 35875 (July 14, 1994).

before reclassification as a Serious ozone nonattainment area, no additional program design elements were required by operation of the DMNFR area's reclassification to Serious for the 2008 8-hr ozone NAAQS. Colorado last demonstrated state program equivalency to the Enhanced program performance standard in its Serious ozone SIP revisions. The EPA's approval of this most recent demonstration of performance standard equivalency became effective on June 8, 2023.<sup>5</sup>

Colorado Air Quality Control Commission's Regulation Number 11 (Regulation No. 11) includes all provisions for the implementation of the State's Enhanced I/M program. Vehicles of the seven most recent model years are exempt from the Colorado I/M program. Discussion of program requirements in this and subsequent sections of this document apply only to non-exempt vehicles. Colorado's Enhanced I/M program utilizes on-board diagnostic (OBD) testing of vehicles that are eleven years old and newer, the dynamometer-based IM240 test for gasoline-powered light-duty vehicles (LDV) between model year 1982 and twelve years old and a two-speed idle (TSI) test for all model year 1981 and older gasoline LDV. Colorado also operates a remote sensing program to fulfill the on-road testing requirement for Enhanced I/M programs under 40 CFR 51.351. All non-diesel fueled light-duty motor vehicles registered in the DMNFR I/M program area are subject to these inspections as a prerequisite to initial or renewed registration of the vehicle with the State. Regulation No. 11, Part A, section I. Under State law, 42-4-3-10, C.R.S., a vehicle owner must provide a certification of emissions compliance or an emissions waiver when applying to renew or initially register their subject vehicle.

On August 19, 2021, the Colorado Air Quality Control Commission adopted changes to Regulation No. 11. The State of Colorado submitted these changes to EPA as an I/M SIP revision with a cover letter dated May 16, 2022. The May 16, 2022, Colorado submittal is available in the docket for today's proposed action. Collectively, the submitted revisions to Regulation No. 11 revise punctuation and style, provide uniformity of regulatory language and

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<sup>5</sup> 88 FR 29827 (May 9, 2023).

internal organization of Regulation No. 11, and make changes to requirements for visual inspection of emission control equipment. The submitted revisions also include state-only updates to emission limits with respect to the IM240 test to increase stringency of emission requirements for vehicles tested under that inspection procedure. The state-only revisions were excluded from the State's request to amend the federally enforceable SIP provisions.

## **II. The EPA's Evaluation**

### *A. Regulation No. 11—Part A*

Colorado's I/M SIP revisions to Regulation No. 11, Part A make several minor clerical and administrative changes to subsections A.II. – *Definitions*, A.IV. – *Clean Screen/Remote Emissions Sensing*, and A.V. – *Expansion of the Enhanced Emissions Program to the North Front Range Area*. These changes include capitalization of a word in a definition, changes to the style of subsection markers for internal consistency of the regulation's notation format, and changes to the style and format of notation for formerly repealed sections of Part A. The revisions to Part A also include minor clerical and administrative changes in subsection A.I. – *Applicability* as well as the removal of reference in that subsection to the requirement of a visual inspection of emission control equipment as a first-step prerequisite for all emission certifications and vehicle registration renewals. The removal of the visual inspection as a prerequisite for all emission certifications will be discussed in more detail in section II.C. of this preamble.

Given the nature of the submitted revisions to Regulation No. 11, Part A, they have no impact on emission reduction benefits provided by the Colorado I/M program and are consistent with CAA requirements.

### *B. Regulation No. 11—Part B*

Colorado's I/M SIP revisions to Regulation No. 11, Part B are limited to clerical and administrative changes to section XI. – *Requests for Approval of Clean Screen Test Analyzer Systems*. These clerical and administrative changes include grammatical revisions, changes to

style, and the removal of referential language, such as “above”, when referring to other paragraphs and subsections of Regulation No. 11, Part B.

Given the nature of the submitted revisions to Regulation No. 11, Part B, they have no impact on emission reduction benefits provided by the Colorado I/M program and are consistent with CAA requirements.

### *C. Regulation No. 11—Part C*

Colorado’s 2022 I/M SIP revision includes amendments to Regulation No. 11, Part C to make several minor clerical and administrative changes. Minor revisions to Regulation No. 11, Part C include changes to sections C.II.—*Exhaust Emissions Inspection Procedures*, C.III.—*Emissions Control Systems Inspection Procedures*, C.VIII.—*Certification of Emissions Control*, and C.XII—*Clean Screen Inspection Program Procedures*. These minor revisions include updates to subsection organizational notation, clerical revisions, changes to referential language, and updates to citations of federal regulations. Minor clerical changes to the organization of Regulation No. 11, Part C include an addition of enumerated subparagraph notations under section C.II.C.3. to clarify requirements for the readiness check of various monitors during an OBD inspection. Other minor revisions include the deletion of several instances of colloquial, referential language throughout Part C to refer to other sections and paragraphs of Regulation No. 11. Intra-regulation references such as “above”, “below”, or “this Paragraph” are either deleted or deleted and replaced with explicit citations to the proper, referenced section of Regulation No. 11 to improve clarity. Colorado also updated a Regulation No. 11, Part C reference to 40 CFR part 86 to update the noted location of federal emission regulations for light-duty vehicles and light-duty trucks.

The 2022 revisions to Part C also make substantive changes to visual inspection procedures, aftermarket catalytic converter repair requirements, and clarification of responsible parties for issuance of emissions certification in cases of vehicle engine swaps. Substantive changes to Regulation No. 11, Part C include the modification of the visual inspection procedure

for inspected vehicles. Sections of Part C affected by the modification of the visual inspection procedures are sections III. and VIII. Colorado has removed the requirement for a visual inspection of emission control devices on all inspected vehicles between model years 1975 and 1995 as a first-step prerequisite to issuing an emissions certification. Part C, section III.A., containing most of the language on this requirement has been repealed. The listing of a successful visual inspection of emission control devices on model year (MY) 1975-1995 vehicles has also been repealed as a prerequisite for certification of emissions compliance under section VIII.A. of Part C. However, Colorado maintains the requirement that any waiver of the certification of emissions compliance will not be granted without a visual inspection of the vehicle's emission control devices. Accordingly, Colorado has included revisions to Part C, section VIII.B. to preserve the visual inspection as a prerequisite to the issuance of an emissions waiver. A discussion that approval of the removal of the mandatory visual inspection of particular emission control devices on all MY 1975-1995 vehicles would not result in interference under CAA section 110(l) is contained in section II.E. of this proposal.

Colorado has also revised Regulation No. 11, Part C, section III.C. to modify aftermarket catalytic converter requirements. The 2022 I/M SIP revision requires the replacement of catalytic converters, when necessitated by failed vehicle inspections, shall only be made with original equipment manufacturer devices or California Air Resource Board (CARB) approved aftermarket components. This revision reflects Colorado's adoption of California aftermarket catalytic converter requirements elsewhere in the State's regulations.<sup>6</sup> Colorado adopted California aftermarket parts requirements, effective January 1, 2021. CARB-approved catalytic converters have tighter criteria pollutant reduction requirements and higher durability requirements than federal standard aftermarket converters; therefore, Colorado's revisions to Regulation No. 11 to reflect the adoption of these California aftermarket catalytic converter requirements will not reduce the emission reduction benefits produced by the I/M program.

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<sup>6</sup> 5 Code Colo. Regs. 1001-24, Part C.

Colorado has also revised Regulation No. 11, Part C, section XI. to clarify that vehicle engine replacements will be certified as conforming to the applicable emission requirements by an I/M program certified emissions technical center licenser or their designee. This revision is administrative in nature and will not reduce the emission reduction benefits produced by the I/M program.

#### *D. Regulation No. 11—Part D*

Colorado's 2022 I/M SIP revision includes amendments to Regulation No. 11, Part D to make several minor clerical and administrative changes. Minor revisions to Regulation No. 11, Part D include clerical changes to sections I. and III. to improve consistency of style of subsection notation and other typographic elements.

Colorado has also revised Part D, sections I. and II. to remove references to visual inspection procedures which are now irrelevant after the State made its concurrent revisions to Part C, as discussed in section II.C. of this preamble. The revisions to Regulation No. 11, Part D are administrative and clerical in nature and will not reduce the emission reduction benefits produced by the I/M program.

#### *E. CAA Section 110(l) Noninterference Evaluation*

Section 110(l) of the CAA requires that EPA not approve a revision to a SIP "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of [the CAA]." In evaluating Colorado's submitted SIP revision, EPA considered whether approval of the revision would result in interference under CAA section 110(l). Consequently, an analysis of whether EPA's approval of the Colorado SIP revision would be consistent with CAA section 110(l) is presented here.

The May 16, 2022, Colorado SIP revision submittal revised the elements of the State's existing vehicle inspection program necessary to obtain a certificate of emissions compliance or a certification of emissions waiver. The certificate of emissions compliance is required to register, or transfer ownership of a vehicle, subject to the Colorado I/M program's applicability

thresholds, in the DMNFR I/M program area. A certification of emissions waiver may be issued to a vehicle for vehicle registration under certain conditions if it fails the State's exhaust emissions inspection, emissions control system inspection, or OBD inspection procedures.

Under the prior, approved SIP version, between January 1, 2015, and the 2022 revision, light-duty vehicles were required to undergo the following inspections and tests:

- *Exhaust Emissions Inspection:* All light-duty vehicles model year (MY) 1982 or newer were required to undergo an IM240 test, or an OBD test, and obtain a pass/fail determination. Regulation No. 11, Part C, section II.B. & II.C. (2015).
- *Emissions Control Systems Inspection:* All vehicles must be configured as required by 40 CFR part 86, unless specific documentation is provided. All MY 1975-1995 vehicles were required to undergo a visual inspection for the presence and operability of the air system, catalytic converter system, and oxygen (O<sub>2</sub>) systems. Regulation No. 11, Part C, section III.A. & III.B. (2015).

If a light duty vehicle passes the exhaust emission inspection and there are no visible smoke emissions from the vehicle, and if an MY 1975-1995 vehicle also passes the emission control systems inspection, the vehicle is issued a certification of emissions compliance. Regulation No. 11, Part C, section VIII.A. (2015). Vehicles that do not qualify for a certification of emission compliance could be issued a waiver if, among other qualifying conditions, the vehicle passes the emission control systems inspection, there are no visible smoke emissions from the vehicle, and the testing staff determine the vehicle has not been tampered with. Regulation No. 11, Part C, section VIII.B. (2015).

Under the May 16, 2022, SIP revision, light-duty vehicles are required to undergo the following inspections and tests:

- *Exhaust Emissions Inspection:* All light-duty vehicles model year (MY) 1982 or newer are required to undergo an IM240 test, or an OBD test, and obtain a pass/fail determination. Regulation No. 11, Part C, section II.C. & II.D.

- *Emissions Control Systems Inspection:* All motor vehicles must be configured as required by 40 CFR part 86, unless specific documentation is provided. Vehicles subject to an OBD test for the Exhaust Emissions Inspection are required to undergo assessment of the emissions control system Malfunction Indicator Lamp (MIL) (i.e., check-engine light) and obtain a pass/fail determination. Regulation No. 11, Part C, section III.A. & III.B.

Under the effective revisions to Regulation No. 11, if a light duty vehicle passes the exhaust emission inspection and there are no visible smoke emissions from the vehicle, the vehicle may be issued a certification of emissions compliance. Regulation No. 11, Part C, section VIII.A. Vehicles that do not qualify for a certification of emission compliance can be issued a waiver if there are no visible smoke emissions from the vehicle and the testing staff determine the vehicle has not been tampered with. The tampering determination must be based on an evaluation, including a visual emissions control system inspection, for MY1975 and newer cars. Regulation No. 11, Part C, section VIII.B. (2015).

In short, the primary change made by the May 2022 SIP submission is that MY 1975 through 1995 vehicles are no longer subject to a preliminary, mandatory visual inspection for the presence and proper function of the “air system, catalytic converter system and oxygen systems”<sup>8</sup> as a pre-requisite for a certification of emissions compliance. In substitution for the across-the-board visual inspection requirement of these components for all MY 1975-1995 vehicles, the newer emission control systems inspection procedure now requires vehicles first go through the previously approved exhaust emission inspection procedures maintained by the program. If a vehicle fails these exhaust emission inspection procedures, it will be required to receive a visual inspection for these components as an additional condition for receiving an emissions waiver. Alternatively, the failing vehicle can either be repaired and retested or will not be re-registered.

For 20 years, EPA has consistently interpreted CAA section 110(l) as prohibiting the EPA from approving a “revision of a [SIP] if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress [ . . . ], or any other applicable

[CAA] requirement.” To “interfere” means to hamper, frustrate, hinder, or impede any applicable CAA provision.<sup>7</sup> Therefore, EPA’s approval of a SIP revision would be consistent with section 110(l) so long as “emissions in the air are not increased,” and “status quo air quality” is preserved.<sup>8</sup> The appropriate analysis under section 110(l) is not standardized and is determined on a case-by-case basis given the nature of the SIP revision.<sup>9</sup> To demonstrate noninterference where EPA anticipates that a SIP revision may result in increased emissions, a state may either substitute equivalent or greater emission reductions in order to preserve status quo air quality or submit an air quality analysis showing that the SIP revision will not interfere with any applicable requirements.<sup>10</sup>

Accordingly, EPA must evaluate whether the revised program’s procedures provide a reasonable substitute for the mandatory visual inspection procedures of all MY 1975-1995 light-duty vehicles, as required in Regulation No. 11 previous to the 2022 SIP revision. Therefore, the EPA evaluated whether the program’s exhaust emission inspection procedures provide suitable safeguards to compensate for the removal of across-the-board visual inspections for the presence and function of these emission control components.

The emission inspection procedures maintained by the Colorado I/M program are designed in accordance with EPA requirements in 40 CFR part 51, subpart S and are SIP-approved. Principally, the EPA requirements for tailpipe emission inspection procedures are designed to ensure state I/M programs can reliably identify high-emitting vehicles due to, among other things, malfunctioning or inoperative emission control components such as catalytic converters and oxygen systems. The visual inspection of the particular emission control components in question is not one of the test elements included in the Enhanced I/M

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<sup>7</sup> Bryan A. Garner, *Garner’s Dictionary of Legal Usage* 570 (3d ed. 2011); see also Merriam-Webster’s Collegiate Dictionary 652 (11<sup>th</sup> ed. 2005) (“to interpose in a way that hinders or impedes”).

<sup>8</sup> *Ky. Res. Council, Inc. v. EPA*, 467 F.3d 986, 991 (6<sup>th</sup> Cir. 2006); see also *Indiana v. EPA*, 796 F.3d 803, 806 (7<sup>th</sup> Cir. 2015); *Ala. Env’t Council v. EPA*, 711 F.3d 1277, 1292-93 (11<sup>th</sup> Cir. 2013); *Galveston-Houston Ass’n for Smog Prevention v. EPA*, 289 F. App’x 745, 754 (5<sup>th</sup> Cir. 2008).

<sup>9</sup> *Center for Biological Diversity v. EPA*, 75 F.4<sup>th</sup> 174, 181 (3<sup>rd</sup> Cir. 2023).

<sup>10</sup> See *Ky. Res. Council, Inc. v. EPA*, 467 F.3d at 995.

performance standard outlined in 40 CFR 51.351(i) for areas designated and classified under the 8-hour ozone standard. The air, catalytic converter and oxygen systems are more critical to reducing emissions of ozone precursors than the components listed in the component inspection element of the Enhanced I/M performance standard. We therefore maintain that the revised, streamlined emission control component inspection compares favorably to the emission control component inspection element of the Enhanced performance standard. Also, given the subjective nature of visual inspections, Colorado's proposed approach would not decrease the benefits or effectiveness of Colorado's I/M program. Therefore, it is reasonable to determine that it is equally, or more, effective to test tailpipe emissions of all MY 1975-1995 light-duty vehicles to identify vehicles for which these components were malfunctioning, absent, or inoperative as it is to visually inspect for the same problems.

The Colorado revisions evaluated in this proposal streamline the program's overall visual emission control inspection procedures by limiting visual inspections to vehicles which have already failed a tailpipe emissions test or OBD test. Colorado's tailpipe emissions tests and OBD testing are EPA-approved inspection procedures and are capable of making a positive discovery of a vehicle with malfunctioning or tampered emission control devices. Further, tailpipe emissions and OBD tests may eliminate visual inspection error and errors in inspector decision-making. Therefore, removal of the visual inspection procedure as a first-pass inspection feature is unlikely to negatively affect program performance. Additionally, this regulatory streamlining does not outright remove the visual inspection requirement and vehicles with visually detectable tampering will still fail to receive the State's inspection certification or a waiver of that certification. As stated above, there is no reasonable basis to assess that the revisions to Regulation No. 11 Part C discussed here will reduce the emission reduction benefits produced by the I/M program. Without cause to believe the revisions will measurably reduce the I/M program's emission reduction benefits, the EPA concludes that status-quo air quality will be preserved under the substitute program visual inspection procedure. Therefore, EPA's proposed

approval of these SIP revisions would not result in interference with attainment, reasonable further progress, or any other applicable CAA requirement and approval would be consistent with CAA section 110(l).

### **III. Proposed Action**

The EPA is proposing to approve changes to the Colorado SIP-approved I/M program regulation as provided in the State's May 16, 2022 submittal. These SIP revisions include changes to Colorado Code of Regulations (CCR) number: 5 CCR 1001-13 Regulation No. 11, Part A, sections I. – *Applicability*, II. – *Definitions*, IV. – *Clean Screen/Remote Emissions Sensing*, and V. – *Expansion of the Enhanced Emissions Program to the North Front Range Area*; Part B, section XI. – *Requests for Approval of the Clean Screen Test Analyzer Systems*; Part C, sections II. – *Exhaust Emissions Inspection Procedures*, III. – *Emissions Control Systems Inspection Procedures*, VIII. – *Certification of Emissions Control*, XI. – *Engine Changes*, and XII. – *Clean Screen Inspection Program Procedures*; and Part D, sections I. – *Licensing of Emissions Inspection and Readjustment Stations, Inspection-only Stations, Inspection-only Facilities, Enhanced Inspection Centers, Fleet Inspection Stations and Motor Vehicle Dealer Test Facilities*, II. – *Qualification of Emissions Mechanics and Emissions Inspectors*, and III. – *Registration of Emissions Related Repair Facilities*. The EPA has made the preliminary determination that the submitted changes to SIP-approved regulations are consistent with CAA requirements; therefore, the EPA is proposing to incorporate these changes into the Colorado SIP.

The EPA is not proposing action on changes to Regulation No. 11, Part F. These changes, although submitted in the same package as the revisions EPA is proposing for approval in this action, were clearly marked as “state only” revisions. The purpose of these state-only revisions was to increase the stringency of tailpipe emission thresholds for vehicle certification. As state-only revisions, the EPA will not evaluate the consistency of the revisions with respect to the relevant CAA and Federal regulation requirements.

#### **IV. Incorporation by Reference**

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Colorado Air Quality Control Commission Regulation Number 11 rules, 5 CCR 1001-13 – Part A, sections I., II., IV. and V., Part B, section XI., Part C, sections II., III., VIII., XI., and XII., and Part D, sections I., II., and III. – as set forth above. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 24, 2025.

**Cyrus M. Western,**  
*Regional Administrator,*  
*Region 8.*

